

MINUTES

**Supreme Court's Advisory Committee
on the Rules of Appellate Procedure**

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

November 20, 2002

ATTENDEES

Todd Utzinger
Joan Watt
Karra Porter
Matty Branch
David Arrington
Clark Sabey
Larry Jenkins
Marian Decker
Fred Voros
Judge Gregory Orme

EXCUSED

Julie Blanch
George Haley
Clark Nielsen

STAFF

Brent Johnson

I. WELCOME AND APPROVAL OF MINUTES

Todd Utzinger welcomed the Committee members to the meeting. Mr. Utzinger moved to approve the minutes of the last meeting. Fred Voros seconded the motion. The motion carried unanimously.

II. APPELLATE QUALIFICATIONS SUBCOMMITTEE

Mr. Utzinger explained that the appellate qualifications subcommittee had been unable to meet since the last Committee meeting. The subcommittee scheduled a meeting for December 5, 2002 at noon. Mr. Utzinger asked subcommittee members to contact attorneys in areas outside of Salt Lake County to get their perspective on this issue.

III. INCORPORATION OF STANDING ORDERS

Mr. Utzinger stated that he had received a telephone call from Matty Branch about incorporating the standing orders into court rules. Ms. Branch had stated that the Supreme Court's preference was that the standing orders not be incorporated into rule. The court feels that the standing orders have been well-published and they prefer the ability to adjust the orders as may be appropriate.

IV. RULE 25 AMENDMENT

Clark Sabey presented a proposal to amend rule 25 and rule 50. The proposal stated that amicus curiae status generally would not be permitted if the allowance would result in the disqualification of any justice or judge who otherwise would participate in decision of the case. Staff expressed a concern about shifting disqualification consequences from the judge to a participant in the proceeding. Judge Orme agreed stating that the proposal might chill the filing of a helpful brief. Mr. Sabey stated that the rule proposal is intended to reflect existing practice. The Supreme Court justices are not likely to grant amicus status if it would result in the disqualification of one of the justices. Mr. Sabey expressed concern that the rule proposal may convey the impression that an amicus has the same status as a party.

Fred Voros expressed the opinion that it is better to make certain that a position is allowed than it is to ensure that a judge is not disqualified. Judge Orme stated that, given the status of an amicus, it is rare that a judge would disqualify based on some relationship with the amicus. Mr. Sabey expressed a concern that the Bar and public will not understand the difference between an amicus and a party and the different disqualification factors that might come into play. Joan Watt suggested amending the rule to make the granting of amicus status discretionary in all circumstances, even when the parties agree to admitting the amicus.

The Committee discussed the amicus process and then suggested that the rule be amended to include a list of factors that the court will consider when deciding whether to grant amicus status, with disqualification being one of the factors. Mr. Utzinger suggested that Mr. Sabey talk with the court about this particular approach and to get feedback from the court before proceeding further. Mr. Sabey agreed that he would discuss the issue with the court and report back to the Committee.

V. FORMATTING COURT RULES

Mr. Utzinger explained that the rules committees had received some complaints from attorneys about some of the rules of procedure and that it is difficult to determine the numbering and paragraphing scheme for citation purposes. It had therefore been suggested that each paragraph of the rules have a full designation of its numbering and lettering before the text of each paragraph. The Committee agreed that this would be a good idea.

VI. ADJOURN

The Committee scheduled their next meeting for January 15, 2003. Mr. Voros stated that the committee on incorporating rules from the Code of Judicial Administration had completed their proposals and that this item will need to be discussed at the January meeting. Mr. Utzinger stated that this should be placed at the top of the agenda. There being no further business, the Committee adjourned at 1:30 p.m.